

ANIMALS:
AGRICULTURE:
STATE VETERINARIAN:
CONFLICT OF INTEREST:

The payment of an indemnity to a state official for an incurred hurt, loss or damage under any provision of law when the same indemnity is available to all private citizens for identical hurts, losses or damages does not constitute a conflict of interest.

OPINION NO. 35

December 14, 1973



Honorable John D. Ashcroft
State Auditor
State Capitol Building
Jefferson City, Missouri 65101

Dear Mr. Ashcroft:

This opinion comes in response to a request made by your predecessor in office as to whether a conflict of interest arises under the provisions of Sections 105.490 or 105.495, RSMo 1969, when the state veterinarian certifies for payment an indemnity claim for personally owned livestock under the Brucellosis Control and Eradication Law, Sections 267.470 et seq., RSMo 1969, or the Livestock Disease Control and Eradication Law, Sections 267.560 et seq., RSMo 1969.

The facts underlying this opinion request are as follows:

1. In conjunction with a cooperative agreement entered into between the Missouri Department of Agriculture and the United States Department of Agriculture, the Missouri Department of Agriculture set up a brucellosis eradication program under the provisions of the Livestock Disease Control and Eradication Law. Under this program, the following standards were set forth by the United States Department of Agriculture, the Missouri Department of Agriculture, and the State Veterinarian governing the payment of indemnities on animals exposed to or infected with brucellosis:

"A. Reactor Animals

1. \$50.00 on grade animals (including grade bulls)
2. \$100.00 on registered animals (registration certificate must accompany indemnity claim)

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3. If owner requests, young calves on reactor cows may also be branded and indemnified in the amount of \$50.00 and shipped to slaughter. (This is to facilitate the immediate removal of all reactor animals and eliminate the requests to retain a reactor animal until her calf reaches weaning age.)
4. Indemnity is available to Missouri owners on brucellosis reactors disclosed at livestock markets. To facilitate processing and payment of claims, forward one completed set and one blank set of ANH Form 1-23, both signed by the owner and the veterinarian. The ANH Form 1-27 is to be completed and attached to the Mo. DAV-11 or to the ANH Form 4-33. Reactors are to be tagged and branded and consigned to slaughter. One market to market movement will be allowed.
5. Appraisal of animals is not required in view of established indemnities paid.
6. Indemnity claims for reactor animals are to be submitted on separate ANH Form 1-23 from negative exposed animals.

"B. Suspect Animals

Same as above

"C. Exposed Animals

1. Complete herd depopulations

Entire breeding herd (including replacement heifers) will be branded and indemnified.

2. Partial depopulations

Negative animals, culled from an infected herd may be branded and indemnified (as a reactor animal) and shipped to slaughter along with the

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reactors, with prior approval from the State Veterinarian's office.

- "D. All animals for which indemnity is claimed, will be branded and tagged and shipped to slaughter within 15 days.
- "E. Branding on the farm may be waived if animals move under direct supervision to a slaughtering establishment.
1. Branding of all reactors, suspects, and negative exposed animals is the responsibility of the District Veterinarian. However, whenever mutually agreed upon, may be performed by the practicing veterinarian on a fee basis.
- "F. Cattle which have moved interstate will be eligible for indemnity providing:
- They have been in Missouri for a minimum of 30 days, and the owner has evidence of a negative brucellosis test conducted by an approved laboratory within 30 days of entry.
- "G. At the time the required quarantine is issued on all reactor herds, the herd owner is to be reminded that no quarantined animals are to be removed without shipping permit to slaughter or prior approval of the State Veterinarian.
- Refer to Paragraph C 2 on partial depopulation.
- "H. Where Federal funds are involved, requirements of CFR, Part 51, shall be met.
- "I. All claims and allied papers are to be submitted to: USDA [United States Department of Agriculture], APHS [Animal and Plant Health Service], VS [Veterinary Services], Box 1027, Jefferson City, Missouri 65101."

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2. If the presence of brucellosis were detected or suspected in a herd, it would be tested for brucellosis by a deputy state veterinarian. Blood samples would be drawn from individual animals and forwarded to a state laboratory for testing. The testing procedure at the laboratory involves a two-step process. The blood sample is initially subjected to a "screen" test. If there is a negative reaction to this test, the test is concluded and the animal from which the sample was taken is determined not to be a diseased animal. However, if there is a positive reaction to the "screen" test, a secondary test is conducted on the sample. A positive reaction to the second test as well as the first means the animal from which the sample was taken is a reactor or a positive carrier of brucellosis. A negative reaction to the second test along with a positive reaction on the first test means that the animal is a suspected carrier of brucellosis.

3. If it were determined by testing that any animals in a herd were carriers of brucellosis, the entire herd was placed under quarantine for a certain period. The entire herd could then be branded as reactors and slaughtered and indemnified. If this step were not taken, all of the reactor animals and suspect animals would be segregated and slaughtered and indemnified. At the end of the quarantine period, blood samples would again be taken from the remaining animals in the herd and forwarded to a state laboratory for testing. If no carriers of brucellosis were detected, the quarantine of the herd would be lifted.

4. If, for any reason, the herd owner wished to sell some or all of the exposed animals in a quarantined herd, i.e., animals which had been exposed to brucellosis but tested negative on the "screen" test, he would be allowed to sell them for slaughter and claim an indemnity as long as they were branded as reactors. In order to accomplish this, the herd owner would contact the deputy state veterinarian in his area who would then telephone the state veterinarian for authorization. Authorization was always given when requested and a form "permission to move" such livestock was issued.

5. Indemnities were uniformly paid by the Department of Agriculture to all owners who slaughtered their reactors, suspect animals, and exposed animals under quarantine.

6. During the period of October, 1971 through September, 1972, the state veterinarian received appropriately \$14,000 in indemnity payments for personally owned cattle which were slaughtered under the provisions of the brucellosis eradication program. Indemnities were claimed on approximately 279 head of personally owned cattle, 163 of which were determined to be positive carriers

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or reactors, 17 of which were determined to be suspect carriers, and 99 of which were exposed cattle belonging to herds under quarantine.

A discussion of the principles of law surrounding the payment of indemnities to state officials would be in order at this point. Our research does not disclose any statute which expressly forbids the payment of an indemnity to a state official. The only possible restrictions would be the provisions of the conflict of interest laws, Sections 105.490 or 105.495, RSMo 1969.

Section 105.490, in pertinent part, reads:

"1. No officer or employee of an agency shall transact any business in his official capacity with any business entity of which he is an officer, agent or member or in which he owns a substantial interest; nor shall he make any personal investments in any enterprise which will create a substantial conflict between his private interest and the public interest, nor shall he or any firm or business entity of which he is an officer, agent or member, or the owner of substantial interest, sell any goods or services to any business entity which is licensed by or regulated in any manner by the agency in which the officer or employee serves."

Section 105.495, in pertinent part, reads:

"No officer or employee of an agency shall enter into any private business transaction with any person or entity that has a matter pending or to be pending upon which the officer or employee is or will be called upon to render a decision or pass judgment. If any officer or employee is already engaged in the business transaction at the time that a matter arises, he shall be disqualified from rendering any decision or passing any judgment upon the same.
. . ."

It seems clear that the purpose of these provisions is to prevent an individual from transacting business between himself as an individual and an agency in which he holds official capacity and to prevent business transactions between an official and a private enterprise which has matters pending before his agency. The question then is whether the payment of an indemnity to a state official constitutes a "business transaction" as that term is used in the conflict of interest laws.

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A business transaction can best be defined as the engagement in the purchase or sale of commodities or service. In its purest sense, an indemnity is simply compensation for an incurred hurt, loss or damage. When an event occurs which would entitle a state official to the payment of an indemnity by the state in the same manner as any other citizen of this state, we fail to see that such compensation would constitute a "business transaction."

The key is uniform application of the indemnity provisions under the law. The indemnity payment must be authorized by statute or lawfully constituted regulation, and the state official involved cannot have exercised his discretion so as to allow himself the payment of an indemnity where none would be allowed to a private citizen.

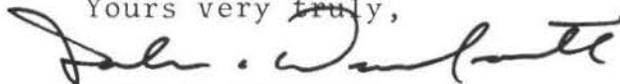
Applying these principles to the facts at hand, we are of the opinion that the state veterinarian did not violate the conflict of interest laws by presenting his claim for and accepting indemnity payments for privately owned cattle which were slaughtered pursuant to the brucellosis eradication program. In reaching this conclusion, we are mindful of the potential for abuse in this particular matter because of the powers and duties of the state veterinarian. However, we have not been presented with any information which would lead us to believe that the state veterinarian acted in his official capacity in a manner calculated to increase his personal fortunes at the expense of the state. We have found nothing in the Missouri law which would prevent the state veterinarian from owning and raising cattle in his individual capacity. When an event occurs which would entitle him to the payment of an indemnity by the state, we fail to see that seeking and accepting such compensation would constitute a conflict of interest.

CONCLUSION

It is the opinion of this office that the payment of an indemnity to a state official for an incurred hurt, loss or damage under any provision of law when the same indemnity is available to all private citizens for identical hurts, losses or damages does not constitute a conflict of interest.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Richard L. Wieler.

Yours very truly,



JOHN C. DANFORTH
Attorney General